In the Supreme Court
OF THE
United States

JUN 11
CHARLES ELMORE

OCTOBER TERM, 1950

No. 110

EDDIE MATTOX and BERTHA MATTOX,
Petitioners and Appellants below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee and Cross-Appellant below.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.

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No.

EDDIE MATTOX and BERTHA MATTOX,
Petitioners and Appellants below,

vs.

UNITED STATES OF AMERICA,
Respondent and Appellee and Cross-Appellant below.

PETITION FOR WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

This is a petition by Eddie Mattox and Bertha Mattox for this Court's Writ of Certiorari to review a

judgment and opinion of the Court of Appeals for the Ninth Circuit rendered in this cause on February 15th, 1951.

The opinion of the Court of Appeals (R. 264-268) is not yet reported.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 15th, 1951. (R. 269.) The jurisdiction of this Court is invoked under United States Code, Title 28, Section 1254 and Section 1651.

The time for filing this petition and brief in support thereof was extended by this Court to the 11th day of June, 1951.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

This action was instituted by a complaint, containing two counts, filed in the District Court of the United States for the Northern District of California, Southern Division, on May 9th, 1949, by the United States of America, respondent herein, against Eddie Mattox and Bertha Mattox, petitioners herein, under provisions of the Housing and Rent Act of 1947, as amended (50 U.S.C.A. Appendix, Sections 1881 et seq.), for injunctive relief, restitution order and for treble damages for alleged violations of said Act on the part of the petitioners, as landlords, in demanding and receiving rents in excess of the maximum rent permitted by said Act, over a period of time from

November 24th, 1947, to May 9th, 1949, the date of the filing of said complaint. (R. 2-8.)

Subsequent to the filing of the original complaint, and after the defendants had filed an answer to said complaint, the plaintiff pursuant to the requirement of the Rules of Civil Procedure, Rule 15(a), on August 19th, 1949, moved the Court "to amend the complaint" on file in said action, upon noticed motion (R. 19), and on the hearing of the motion it was by the Court ordered that plaintiff's motion "to amend complaint" be granted. (R. 19-20.)

On September 8th, 1949, plaintiff filed an amended complaint, which contains four counts, the first two counts directed at excessive rentals alleged to have been collected from four tenants named in Exhibit "A" attached to the amended complaint, over a period from November 24th, 1947, the date of the earliest item, to May 13th, 1949, and amounting in the total to $2,324.40. (R. 27.) The other two counts (Counts III and IV) of the amended complaint (R. 22-24) are based entirely upon violation of retroactive rent refund orders issued by the local Area Rent Director on June 2nd, 1949, more than three (3) weeks after the commencement of the action, reducing the maximum rent for the premises described in Exhibit "B", attached to the "amended complaint" requiring the defendants to refund to the tenants, eight (8) in number, named in said Exhibit "B", any rent collected from the effective dates of said retroactive rent reduction orders, in excess of the reduced maximum amount provided therein, within thirty (30) days of the date of said

orders. The gist or gravamen of these counts is that more than thirty (30) days have passed since the date of said orders (none of which admittedly were in existence when the action was begun), and the defendants have wholly failed to make any or all of the refunds so ordered. (R. 23-24.) The amount of the refund so ordered is $4,437.40, covering the period between the 26th day of November, 1947, the date of the earliest item, and June 2nd, 1949, the date the orders were issued. (R. 28.)

Defendants filed an answer to the amended complaint, wherein, after denying generally the allegations of each count, they alleged, in further answer and as a separate and affirmative defense to each of the counts, that the count fails to state any facts or acts or claim against them, or either of them, upon which relief can be granted and, as to Counts III and IV, further alleged that it in particular fails to state or plead any facts showing that any rent reduction order referred to therein was at any time prior to the commencement of the action served upon the defendants, or either of them. (R. 34-37.)

The trial was by the Court and upon the conclusion of the trial the Court gave and rendered its decision in the form of findings of fact and conclusions of law (R. 38-43), by which it *inter alia* substantially found that the defendants, in violation of provisions of the Housing and Rent Act of 1947, as amended, and Rent Regulations for the enforcement thereof, demanded, accepted and received from each and every one of the twelve (12) tenants, as set forth in Exhibits "A"

and "B", attached to plaintiff's "amended complaint", amounts in excess of the legal, maximum rents as set forth in said exhibits, to the total sum of $6,761.80. (R. 39-41.)

The trial Court also found that the violations of the Act and the Regulations, committed by the defendants, were neither willful nor resulted from their failure to take practicable precautions. (R. 41.)

Further findings of the trial court (following the allegation of Counts III and IV of the amended complaint) are:

"IV.

That on or about June 2nd, 1949, Henry A. Cross, the duly appointed Director for the San Francisco Bay Defense Area, pursuant to the authority granted him under the Housing and Rent Act of 1947, as amended, and the Regulations issued pursuant thereto, did under Section 825.5(c)(3) and 825.5(b) of said Rent Regulations issue orders reducing the maximum rent for those certain housing accommodations known as Numbers 1805, 1805A, 1811, 1813A, 1815, 1817, 1819 and 1823 Ellis Street, San Francisco, California, and that by the terms of the said orders the defendants, and each of them, were required to refund to the tenants of the aforesaid housing accommodation any rent collected from the effective date of said orders, in excess of the amount provided in said orders within 30 days from the date of said orders.

"V.

That defendants, Eddie Mattox and Bertha Mattox, and each of them, were in violation of the

orders referred to in the finding No. IV above, in that they have wholly failed, either within the 30 days required under the orders referred to in Finding No. IV above, or at any time or at all, to make the refunds required by the said orders.

"VI.

That the orders of the San Francisco Bay Defense Rental Area referred to in Finding IV above, were duly served in accordance with the regulations issued pursuant to the Housing and Rent Act of 1947, as amended, upon defendants Eddie Mattox and Bertha Mattox." (R. 39-41.)

From the findings of fact, the Court concluded:

That it had jurisdiction of the subject matter of the action and of the parties under the amended sections 205, 206(b) and 206(c), of the Housing and Rent Act of 1947; that plaintiff was entitled to a permanent injunction as prayed for in its amended complaint; and that plaintiff, on account of the aforesaid violations, is entitled to judgment requiring and directing the defendants to forthwith refund to the plaintiff, in behalf of the tenants named in the aforesaid exhibits "A" and "B", the sums set forth as overcharges opposite their names in said exhibits, being the total sum of $6,761.50, or in the alternative, to the Treasurer of the United States, and directed that judgment be entered in accordance therewith. (R. 42-43.)

Judgment, based upon the findings of fact and conclusions of law, was entered in the trial Court on March 8th, 1950. (R. 46.) By it, no damages were awarded to the plaintiff. An appeal from said judg-

ment was taken by Eddie Mattox and Bertha Mattox, petitioners herein (R. 47), and a cross-appeal was taken by the United States of America, respondent herein (R. 261), to the Court of Appeals for the Ninth Circuit, which affirmed the judgment in so far as it granted injunctive relief and restitution, and reversed the judgment in so far as it denied plaintiff an award of damages, notwithstanding it upheld the trial court's finding that the collection of rents in excess of the maximum established rent under the Rent Regulations was not willful nor the result from their failure to take practicable precautions, on the ground that lack of willfulness, coupled with the taking of practicable precautions against the occurrence of a violation, operates only to reduce damages to the amount of the overcharge and the trial Court, upon a finding of violation, must grant a judgment in damages in an amount at least equal to the amount of the overcharges, such mandatory principle being in nowise affected by a grant of restitution to the tenant in an action in equity for the enforcement of an equitable remedy resorted to under the Act. (R. 266-267.)

The principal questions involved on said appeal of the petitioners herein were: (1) Whether the trial court erred in concluding it had jurisdiction of the subject matter of the action under the amended Sections 205, 206(b), and 206(c) of the Housing and Rent Act of 1947; (2) Whether the trial Court had jurisdiction or authority to enter such judgment upon the admitted facts and amended complaint; (3) whether the amended complaint, and each of the sev-

eral counts set up therein, fails to state any facts or acts or claim against the defendants upon which relief could be granted in this action, under amended Section 205 or Section 206(b) of the Housing and Rent Act of 1947 (50 U.S.C.A. Appendix Secs. 1895 and 1896); and (4) whether the findings sustained the conclusions and judgment based thereon.

All of said questions were duly raised and argued by your petitioners in their brief filed in said Court of Appeals. None of these questions, which materially affected the determination of said appeal, were decided by said Court of Appeals, which declined to consider them or even mention them in its opinion and decision, on the ground advanced by the Court, in the opinion, that they did not have "merit sufficient to justify the discussion". (R. 265.)

Petitioners, in opposition to the cross-appeal taken by the plaintiff, respondent herein, because of the failure of the trial court to award damages, urged in their brief, among other things:

> The only grants of jurisdiction to Federal District Courts in the amended Housing and Rent Act of 1947, (50 U.S.C.A. Appendix Sections 1881, et seq.) are in Section 1895 of the Act relating to the recovery of damages and in subdivision (b) of Section 1896 of the Act relating to enforcement.
>
> The amended Act of 1947 can be searched from beginning to end and nothing can be found therein which confers any power upon the Court in granting an order for restitution of illegally collected

rents, to either double or treble the amount thus ordered to be refunded, or requiring the Court, as ancillary to the exercise of its benign equity powers, to give judgment for damages for the amount of rents found to be illegally collected within the one year prior to the institution of the action, and for which it has ordered restitution. The remedies of injunction and restitution with respect to overcharges by landlord for rental accommodations are equitable remedies addressed to the discretion of the Court.

ACTIONS AND RULINGS OF THE COURT OF APPEALS BRINGING THE CASE WITHIN THE JURISDICTION OF THIS COURT.

The Court of Appeals ruled: (1) That none of the petitioners' contentions has merit sufficient to justify discussion (R. 265), without setting forth in the opinion any of the contentions, and, in effect, ruled:

(a) That plaintiff's right to injunctive relief and restitution order under rent law and regulations, for collecting rental allegedly in excess of maximum rents established under Rent Regulations is not required to be predicated upon administrative orders or facts in existence at the time the original complaint was filed, and the District Court could adjudicate rights which accrued, or which were based upon violations or disobedience of such orders and facts that occurred subsequent to the commencement of the action; and

(b) That a plaintiff, having once elected to go into chancery and appealed to the chancellor,

need not abide his choice, or stay there, or take the unfavorable with the favorable—the bitter with the sweet; and

(c) The rule that application to an equity court for relief is addressed to the sound discretion of the Court, and such relief may be granted or withheld as the Court may deem desirable and necessary or inequitable under the circumstances in which they appear before the Court, has been modified by the Housing and Rent Act of 1947, as amended.

(2) That the District Court upon the finding of a violation must grant a judgment in damages in an amount at least equal to the amount of the overcharges, and the trial Court erred in denying damages at least in the amount of the overcharges, such mandatory principle being in nowise affected by a grant of restitution to the tenant. (R. 266-267.)

Each of such rulings is reviewable by this Court under the appropriate statutory provisions noted, and Rule 38(5)(b) of the Rules of the Supreme Court.*

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*"A review on Writ of Certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons which will be considered. * * *

(b) Where a Circuit Court of Appeals has rendered a decision in conflict with the decision of another Circuit Court of Appeals on the same matter; or has decided an important question of local law in a way probably in conflict with applicable local decisions; or has decided an important question of Federal Law which has not been, but should be, settled by this Court; or has decided a Federal question in a way probably in conflict with

This summarized statement is necessary in the length that we make it in order to raise the several questions sought to be raised by petitioner here.

QUESTIONS PRESENTED.

1. Should the trial Court have dismissed the Counts III and IV of the amended complaint, for lack of jurisdiction of the subject matter in this case, and should the United States Court of Appeals have reversed the judgment of the trial Court on account of its failure so to do.

2. Whether plaintiff's right to injunctive relief and restitution order, under the Rent Law and Regulations, for failure to refund rentals alleged in Counts III and IV of the amended complaint to have been collected by defendants in excess of maximum rents established under Rent Regulations, and ordered to be refunded by retroactive rent reduction orders promulgated by Rent Administrator, was required to be predicated upon such orders and facts in existence at the time the original complaint was filed, on May 9th, 1949.

3. Whether the trial Court could adjudicate rights which accrued or which were based upon violation

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applicable decisions of this Court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower Court, as to call for an exercise of this Court's power of supervision."

of Rent Director's rent reduction orders and facts that occurred after the action was begun.

4. Whether, under the Federal Rules of Civil Procedure, a plaintiff is permitted to make, or a Court is authorized to permit and sanction, an amendment of his original complaint which injects a new and distinct cause of action into the case which was nonexistent at the time the original complaint was filed.

5. Whether the trial Court, in the exercise of a sound judicial discretion, in an action in equity, properly abstained from awarding plaintiff damages, and the Court of Appeals has undertaken to judicially legislate and apply an arbitrary and inflexible rule of damage, in all cases, legal and equitable, not justified by the statute or the facts and contrary to the statute, rulings of this Court and of other Circuits, as well as the weight of the authorities and recognized and settled principles of equity.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1. In holding, in effect, that, under the circumstances herein set forth, the action of the trial Court in entertaining and assuming jurisdiction of the subject matter of the new and distinct causes of action brought before it by Counts III and IV of the amended complaint and which were nonexistent at the time the action was begun, but were created by the plaintiff's own act and matured long after the action was begun, was proper, and disposing of the petitioners' contentions to the contrary by mere *ipse dixit* that they did not have merit sufficient to justify discussion, the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, and also sanctioned such a departure by a lower Court as to call for an exercise of this Court's power of supervision.

2. Under the circumstances cited herein, the action of the Court of Appeals in affirming the trial Court upon the above proposition can be assigned as error, and constituted error under the decisions of this Court and the Court of Appeals.

3. The Court of Appeals denied to your petitioners a fair and impartial hearing of their cause, and failed in the performance of its duty to determine the trial Court's jurisdiction of the subject matter of the new and distinct causes of action brought before the trial Court, by Counts III and IV of the amended complaint, contrary to the Federal Rules of Civil Procedure and the decisions of this Court.

4. The Court of Appeals has misconstrued amended Section 205 of the Housing and Rent Act of 1947 (50 U.S.C.A. Appendix Sec. 1895), in holding that the District Court, upon a finding of violation, must grant a judgment in damages in an amount at least equal to the amount of overcharges.

5. The Court of Appeals, in so holding, has erroneously applied an arbitrary and inflexible rule of damage, not justified by the statute, or the facts, and contrary to the statute, rulings of this Court and of another Circuit as well as to the weight of the authorities, and recognized and settled principles of equity.

6. The decision of the Court of Appeals is directly in conflict with the decision of the Court of Appeals for the Fifth Circuit in *Jackson v. Woods* (1950), 182 F. (2d) 338, which holds that where the rent charges are proven, judgment should be rendered against landlord for not less than the amount of such overcharges, and relief may be either by way of restitution in appropriate circumstances, or by a judgment for damages under a law action.

7. The decision of the Court of Appeals is contarary to the decisions of this Court in *Woods v. Stone,* 333 U.S. 472, ...L. Ed....., 68 S. Ct. 624; *United States ex rel. Texas Portland Cement Co. v. McCord,* 233 U.S. 157, 58 L. Ed. 893, 34 S. Ct. 550; *Union P. & R. Co. v. Wyler,* 158 U.S. 285, 39 L. Ed. 98, 15 S. Ct. 877; *Smith v. Woolfolk,* 115 U.S. 143, 29 L. Ed. 357, 5 S. Ct. 1117; *Shields v. Barrow,* 17 How. (U.S.) 130, 15 L. Ed. 158; *Porter v. Warner Holding Co.,*

328 U.S. 395; *City of Texarcana v. Arkansas Louisiana Gas Co.*, 306 U.S. 188, 83 L. Ed. 598, 59 S. Ct. 448.

8. The question involved in this case,—whether under the Housing and Rent Act of 1947 (as amended), and recognized and settled principles of equity, a court of equity in granting equitable relief pursuant to equitable remedies provided for by the Act and ordering restitution of rent overcharges, must grant a judgment in an amount at least equal to the amount of the overcharges, and can exercise no discretion as to the amount of damages, or give effect to the one year provision of the statute,—is one of Federal law, of no little importance, which has not been, but should be, settled by this Court.

Your petitioners present herewith, as part of this petition, a brief showing more fully their views upon the questions involved, and also a certified transcript of the record in the Court of Appeals.

CONCLUSION.

Wherefore, your petitioners pray that this petition for a writ of certiorari should be granted to the end, that this cause may be reviewed and determined by this Court as provided for by the statutes of the United States, and that the judgment of the United States Court of Appeals for the Ninth Circuit be reversed by this Court, and your petitioners pray that the certified copy of the record and proceedings of said United States Court of Appeals for the Ninth

Circuit, filed with this petition, may be treated as a return to said writ of certiorari, and your petitioners pray that they may have such other and further remedies in the premises as to the Court may seem appropriate and in conformity with law and equity.

Dated, San Francisco, California,
June 6, 1951.

EDDIE MATTOX,
BERTHA MATTOX,
Petitioners.

WILLIAM KLEIN,
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REED M. CLARKE,
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